

**Tuesday, October 28, 2008**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Frances L. Cummings and Thomas Cummings, 423959

For Appellant: Keith A. Shibou, CPA

For Franchise Tax Board: Judy Hirano, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The taxpayers' representative withdrew the appeal, therefore the matter was dismissed.

Delbert Saubel and Elaine D. Saubel, 400896, 434825

2003, \$8,081.00 Assessment

2004, \$8,266.00 Assessment

For Appellant: Keith A. Shibou, CPA

For Franchise Tax Board: Natasha Sherwood Page, Tax Counsel

Teresa Wignall, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants, as California residents, are subject to tax on the per capita Indian gaming distributions received from the Agua Caliente Band of Cahuilla Indians.

Whether the Indian Gaming Regulatory Act and California State Gaming compact together preclude California from taxing individual tribal members.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Thomas C. DuBose, Jr. and Margaret I. DuBose, 423967

1997, \$4,598.00 Tax, \$1,839.20 Accuracy-Related Penalty, \$2,002.57 Amnesty Interest Penalty

For Appellant: Thomas C. DuBose, Jr., Taxpayer

Margaret I. DuBose, Taxpayer

For Franchise Tax Board: Diane Ewing, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Franchise Tax Board issued the notices of proposed assessment within the applicable statute of limitations period.

Whether appellants have met their burden of proving that respondent's deficiency assessment based on a federal determination was made in error.

Whether the Board has jurisdiction to abate any portion of the amnesty interest penalty.

Whether the accuracy-related penalty was properly imposed and whether appellants have shown reasonable cause for abatement of the penalty in the event that respondent does not abate the penalty.

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Diane Ewing, Tax Counsel, Franchise Tax Board, conceded abatement of the accuracy-related penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Ms. Steel urged the Franchise Tax Board to streamline the process of getting information to taxpayers more timely when the IRS notifies the Franchise Tax Board that returns are under federal audit. Mr. Leonard recommended that the Franchise Tax Board remind the taxpayers that they have an obligation to tell the Franchise Tax Board the results of the federal audit.

Mr. Leonard requested the Franchise Tax Board provide the Board with information that would show its efforts to collect taxes from appellants' spouses.

Anthony J. Ciabattoni, 400348  
2005, \$7,387.54 Claim for Refund

For Appellant:

For Franchise Tax Board:

Anthony J. Ciabattoni, Taxpayer

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown reasonable cause for abatement of the late payment penalty.

Appellant's Exhibit: Page from Credit Report (Exhibit 10.13)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

## **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Maria E. Alvarez, 383697

2004, \$632.00 Tax, \$158.00 Delinquent Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Dominic Denha, 400250

2004, \$599.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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**Doug Green, 381614**

1988, \$13,009.06 Tax

Action: Sustain the action of the Franchise Tax Board.

**David Grossman, 377155**

2004, \$3,454.00 Tax, \$863.50 Failure to File Penalty, \$863.50 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

**Kitty M. Hunsaker, 373248**

1994, \$812.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Carole Koelfgen, 395441**

2005, \$1,157.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Nancy W. Reckas, 362358**

2002, \$297.00 Tax

Action: Sustain the action of the Franchise Tax Board.

**May C. Strickland, 352481**

2004, \$921.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

**Chinin Tana, 377390**

1999, \$586.56 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Affiliated Funding Corporation, 317945**

2003, \$14,446.88 Claim for Refund

Action: Deny the petition for rehearing.

**Robert Fouts and Maureen Fouts, 383284**

2000, \$245,549.00 Assessment, \$61,387.25 Failure to Furnish Information Penalty

Action: Deny the petition for rehearing.

**Jerome Thomas Heckenkamp, 381120**

2004, \$920.00 Tax, \$230.00 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

**Eugene W. Lee, 349301**

2003, \$7,069.00 Tax, \$3,624.50 Penalties and Fees, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Marc Pretscher, 393425

2004, \$12,202 Tax, \$6,101.00 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Byron Reynolds, 382836

2004, \$4,158.00 Tax, \$2,130.75 Penalties, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Marc Pretscher, 414671

2001, \$15,009.00 Tax, \$3,752.25 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

Paul A. Ricci, 415357

1998, \$6,035.79 Claim for Refund

2000, \$38,982.49 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Mary Arbuckle, 424063

2007, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Diana Eisenbeiss, 387192

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Pamela Ann Vargo, 397105

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matters: *Richard W. Boothman, 348231 (OH)*; and, *Joyce M. Wooley, 348230 (OH)*.

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With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

**Richard W. Boothman, 348231 (OH)**

7-1-03 to 12-31-03, \$67,919.50

Action: The Board took no action.

**Joyce M. Wooley, 348230 (OH)**

7-1-03 to 12-31-03, \$67,919.50

Action: The Board took no action.

**Chordiant Software, Inc., 387754 (GH)**

1-1-04 to 3-31-06, \$140,650.00

Action: Approve the redetermination as recommended by staff.

**La Salsa Holding CO-A Delaware Corp., 431875 (EA)**

10-1-02 to 12-31-03, \$228,078.00

Action: Approve the redetermination as recommended by staff.

**CKE Restaurants, Inc., 431867 (EA)**

1-1-01 to 12-31-03, \$150,690.09

Action: Approve the redetermination as recommended by staff.

**Montblanc North America, LLC, 442300 (OH)**

7-1-02 to 9-30-05, \$88,571.18

Action: Approve the redetermination as recommended by staff.

**Mindspeed Technologies, Inc., 435919 (EA)**

10-1-04 to 9-30-07, \$799,457.53

Action: Approve the redetermination as recommended by staff.

**Oak Power Corp. Ltd. Ptn., 341192 (AR)**

10-1-02 to 12-31-07, \$1,021,686.00

Action: Approve the denial of claim for refund as recommended by staff.

**CD Poso I, Inc. Ltd. Ptn., 341180 (AR)**

10-1-02 to 12-31-07, \$422,292.00

Action: Approve the denial of claim for refund as recommended by staff.

**CD Jasmin I, Inc. Ltd. Ptn., 341181 (AR)**

10-1-02 to 12-31-07, \$366,723.00

Action: Approve the denial of claim for refund as recommended by staff.

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Ace Cogeneration Company, LP, 341179 (EH)

10-1-02 to 12-31-05, \$1,810,369.00

Action: Approve the denial of claim for refund as recommended by staff.

Ace Cogeneration Company, LP, 437743 (EH)

1-1-06 to 12-31-07, \$1,305,350.00

Action: Approve the denial of claim for refund as recommended by staff.

Garden City, Inc., 345308 (GH)

7-1-01 to 12-31-04, \$98,746.67

Action: Approve the denial of claim for refund as recommended by staff.

MCM &amp; Associates, Inc., 404733 (GH)

1-1-06 to 9-30-06, \$61,711.90

Action: Approve the denial of claim for refund as recommended by staff.

Information Resources, Inc., 423620 (OH)

7-1-04 to 6-30-07, \$90,415.73

Action: Approve the denial of claim for refund as recommended by staff.

Searles Valley Minerals Operations, Inc., 341746 (OH)

10-1-02 to 3-31-05, \$2,016,049.15

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matters: *RJ Financial, Inc.*, 338827 (AA); *Oracle Corporation*, 460489 (BH); and, *Oracle Corporation*, 219810 (BH).

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Miller Brewing Company, 460669 (EA)

10-1-07 to 12-31-07, \$63,133.15

Action: Approve the credit and cancellation as recommended by staff.

The Artesia Companies, Inc., 282966 (KH)

4-1-01 to 9-30-03, \$114,332.11

Action: Approve the credit and cancellation as recommended by staff.

Cipriano Espino Salazar, 460872 (AC)

4-1-02 to 8-15-04, \$709,773.03

Action: Approve the credit and cancellation as recommended by staff.

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RJ Financial, Inc., 338827 (AA)

1-1-98 to 12-31-01, \$673,259.97

Action: The Board took no action.

Oracle Corporation, 460489 (BH)

7-1-95 to 12-31-95, \$76,101.14

Action: The Board took no action.

Bowne of Los Angeles, Inc., 133520 (AS)

4-1-98 to 12-31-98, \$60,249.16

Action: Approve the refund as recommended by staff.

CSC Outsourcing, Inc., 377107 (FH)

7-1-99 to 3-27-01, \$124,668.61

Action: Approve the refund as recommended by staff.

Coastal International, Inc., 448981 (JH)

4-1-08 to 6-30-08, \$210,868.72

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 436891 (EH)

1-1-07 to 12-31-07, \$79,332.30

Action: Approve the refund as recommended by staff.

American Material Management Alliance, Inc., 209398, (EH)

1-1-00 to 6-30-06, \$1,933,642.27

Action: Approve the refund as recommended by staff.

KLA-Tencor Corporation, 288546 (GH)

7-1-01 to 12-31-04, \$1,324,727.03

Action: Approve the refund as recommended by staff.

Oracle Corporation, 219810 (BH)

1-1-93 to 5-31-95, \$60,714.84

Action: The Board took no action.

Information Resources, Inc., 423620 (OH)

7-1-04 to 6-30-07, \$171,734.34

Action: Approve the refund as recommended by staff.

Insurance Company of the West, 379407 (FH)

7-1-03 to 9-30-06, \$269,910.47

Action: Approve the refund as recommended by staff.

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Wachovia Dealer Services, Inc., 447257 (EA)

1-1-08 to 3-31-08, \$3,621,534.48

Action: Approve the refund as recommended by staff.

Calpine Corporation, 444324 (GH)

\$1,204,444.29

Action: Approve the refund as recommended by staff.

Koch Membrane Systems, Inc., 430061 (OH)

10-1-04 to 3-31-07, \$70,020.11

Action: Approve the refund as recommended by staff.

Valero Marketing and Supply Company, 459653 (OH)

7-1-07 to 9-30-07, \$61,660.94

Action: Approve the refund as recommended by staff.

Sonic-Calabasas A, Inc., 449598 (AC)

1-1-03 to 3-31-06, \$117,276.70

Action: Approve the refund as recommended by staff.

Mullen Bros., Inc., 446517 (AC)

7-1-05 to 6-30-07, \$138,974.50

Action: Approve the refund as recommended by staff.

Foreman Financial, Inc., 450966 (AC)

7-1-04 to 3-31-07, \$140,146.77

Action: Approve the refund as recommended by staff.

Consumer Portfolio Services, Inc., 387494 (EA)

4-1-05 to 6-30-07, \$625,664.01

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 446519 (EA)

1-1-08 to 3-31-08, \$116,379.20

Action: Approve the refund as recommended by staff.

California Coast Credit Union, 417683 (FH)

1-1-07 to 9-30-07, \$73,262.88

Action: Approve the refund as recommended by staff.

A-L Financial Corp, 415650 (EA)

4-1-07 to 12-31-07, \$641,286.83

Action: Approve the refund as recommended by staff.



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A-L Financial Corp, 446522 (EA)

1-1-08 to 3-31-08, \$228,808.17

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 445928 (AR)

4-1-05 to 6-30-05, \$57,850.38

Action: Approve the refund as recommended by staff.

Acco Brands USA, LLC, 464344 (OH)

6-11-08 to 6-11-08, \$96,833.89

Action: Approve the refund as recommended by staff.

Kyoho Manufacturing California, 446216 (KH)

10-1-07 to 12-31-07, \$72,158.35

Action: Approve the refund as recommended by staff.

Household Retail Service, Inc., 449799 (OH)

1-1-03 to 12-31-04, \$4,366,667.48

Action: Approve the refund as recommended by staff.

Louis Dreyfus Corporation, 451412 (OH)

10-1-07 to 12-31-07, \$276,548.25

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Chevron U.S.A., Inc., 450763*; *Amco Insurance Company, 460150*; *Allied Property & Casualty Insurance Company, 460157*; *Nationwide Mutual Insurance Company, 460160*; and, *Victoria Fire & Casualty Company, 460180*; the Board made the following orders:

Chevron U.S.A., Inc., 450762 (MT)

3-1-08 to 3-31-08, \$846,510.20

Action: Approve the relief of penalty as recommended by staff.

Chevron U.S.A., Inc., 450763 (MT)

3-1-08 to 3-31-08, \$375,509.56

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Amco Insurance Company, 460150 (ET)

4-1-08 to 6-30-08, \$363,264.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Allied Property & Casualty Insurance Company, 460157 (ET)

4-1-08 to 6-30-08, \$104,120.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nationwide Mutual Insurance Company, 460160 (ET)

4-1-08 to 6-30-08, \$192,988.50

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Victoria Fire & Casualty Company, 460180 (ET)

4-1-08 to 6-30-08, \$76,964.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

#### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

PMI Mortgage Insurance Company, 354105 (ET)

1-1-04 to 12-31-04, \$55,941.93

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Allstate Life Insurance Company, 427395 (ET)

1-1-04 to 12-31-04, \$195,258.56

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Genworth Life and Annuity Insurance Company, 432843 (ET)

1-1-03 to 12-31-05, \$872,587.06

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Northwestern Mutual Life Insurance Company, 457465 (ET)

1-1-06 to 12-31-06, \$112,242.90

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nationwide Mutual Insurance Company, 457466 (ET)

1-1-06 to 12-31-06, \$499,759.90

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Daniel V, Inc., 342609

1997, \$40,759.23 Tax, \$8,151.85 Accuracy-Related Penalty, \$10,189.80 Late Filing Penalty

1998, \$840,010.32 Tax, \$168,002.06 Accuracy-Related Penalty

Considered by the Board: May 28, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision granting the petition for rehearing with respect to the penalties only.

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding the sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel.

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following order:

Action: Approve the sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff and additionally the Board directed staff to recalculate the rate on December 15, 2008 based on data collected during the 13 weeks prior to December 15, 2008 and provide the adjusted rate to the Board for approval at its December 16, 2008 meeting. (Exhibit 10.14.)

Dr. Chu directed staff to research fraud and nonpayment of tax due to rising fuel prices.

Dr. Chu announced that there were no Closed Session items to discuss, therefore Closed Session was cancelled.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD OCTOBER 28, 2008**

Delbert Saubel and Elaine D. Saubel, 400896, 434825

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and denied the appeal because the appellant did not reside in Indian Country.

Thomas C. DuBose, Jr. and Margaret I. DuBose, 423967

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board, which included a concession by the Franchise Tax Board to abate the accuracy-related penalty.

Anthony J. Ciabattoni, 400348

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. Mr. Leonard made a substitute motion to abate the late payment penalty. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 11:15 a.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Thomas E. Philips and Christa Philips, 378023

1997, \$1,360.66 Claim for Refund

1998, \$2,000.60 Claim for Refund

1999, \$1,294.00 Claim for Refund

2000, \$1,595.00 Claim for Refund

For Appellant:

Thomas E. Philips, Taxpayer

Habib Hanna, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants files timely claims for refund for 1997, 1998, 1999 and 2000.

Whether the statute of limitations may be waived.

Whether the doctrine of estoppel applies to allow appellants' claim for refund for 1997, 1998, 1999 and 2000.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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The Board recessed at 1:53 p.m. and reconvened at 1:58 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Oscar E. Martinez, 402210

1999, \$42,241.00 Tax, \$8,010.35 Post-Amnesty Penalty

2000, \$11,405.00 Tax, \$1,530.42 Post-Amnesty Penalty

2001, \$2,174.40 Tax, \$179.30 Post-Amnesty Penalty

For Appellant:

Oscar E. Martinez, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has met his burden to show error in the proposed assessments, which are based on federal determinations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.15)

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and suggested that the taxpayer speak to the Franchise Tax Board regarding their Offer in Compromise Program.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD OCTOBER 28, 2008**

Thomas E. Philips and Christa Philips, 378023

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Alex C. Bates, 406133

2003, \$2,094.00 Tax, \$1,047.00 Penalties

2004, \$124.00 Tax, \$131.00 Penalties

For Appellant:

Appearance Waived

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in respondent Franchise Tax Board's proposed assessments.

Whether there is reasonable cause for appellant's failure to file timely returns and failure to file upon the Franchise Tax Board's notice and demand letters.

Whether the Board should impose a frivolous appeal penalty.

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Action: Ms. Yee moved to sustained the action of the Franchise Tax Board and impose a \$500.00 frivolous appeal penalty. The motion was seconded by Dr. Chu. Ms. Yee rescinded her motion.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

The Board adjourned at 2:10 p.m.

*The foregoing minutes are adopted by the Board on December 17, 2008.*

Note: The following matters were removed from the calendar prior to the meeting: *Viking Office Products, Inc.*, 313229, 339787; *Douglas A. Shiepe*, 421046; and, *John Laszloffy*, 416532.